THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2017-CP-10-02758
Appellate Case No. 2019-001716

Jeane Whitfield,

Appellant,

v.

Dennis K. Schimpf, M.D. and Sweetgrass Plastic Surgery, LLC,

Respondents.

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Jeane Whitfield, through her undersigned counsel, hereby petitions this Honorable Court for a rehearing in connection with the unpublished opinion issued in this case (Opinion No. 2022-UP-417), filed on November 23, 2022, attached hereto. Appellant respectfully submits that the following points have been overlooked or misapprehended by the Court:

I. Appellant's compliance with a prior discovery order requiring her to submit to physical and mental examinations by Defendants' previously-designated medical experts does not render the testimony regarding those examinations admissible at trial, particularly where the experts are not independent, disinterested physicians as required by Rule 35, SCRCP and

Fairchild v. S.C. Dep't of Transp., 727 S.E.2d 407, 398 S.C. 90 (2012).

Appellant respectfully submits that this Court's erred in conflating the standard for discoverability with that of admissibility. Specifically, an order granting discovery has no effect on whether the evidence obtained in discovery is admissible at trial. See *Hansen v. DHL Laboratories, Inc.*, 450 S.E.2d 624, 316 S.C. 505 at n. 5, quoting 27 C.J.S. Discovery § 87 (1959), "[The] judge hearing the motion for discovery has no authority to determine the admissibility in evidence of the document produced, that being a matter for the trial court."

In the present case, Appellant objected to the *admission* of testimony at trial by Defendants' expert witnesses regarding the physical and medical examinations they had conducted on her. (Motion in Limine, R. pp. 169-172; Trial Tr., R. p. 618, line 14 to p. 627, line 4). This Court's opinion errs in finding that Appellant was somehow precluded from challenging the admission of said testimony at trial simply because she had complied with the underlying discovery order. In doing so, the opinion fails to acknowledge and/or consider the difference between items that are discoverable and those which prove admissible. "Just because evidence is discoverable does not mean it is admissible." *Hesline v. Lenahan (In re Eleanor Mccarthy Lenahan Trust Under Agreement Dated July 12, 2001)*, 428 S.C. 598, 836 S.E.2d 793. (S.C. App. 2019).

In addition, none of the cases cited in Section 1 of the Court's opinion speak to the *admissibility* of evidence, but rather to their discoverability. It was error for the Court to find that Appellant was precluded from challenging the admissibility of patently biased and highly prejudicial testimony simply because she had complied with a discovery order that commanded her to submit to examinations in violation of Rule 35, SCRCP and *Fairchild*. Accordingly, Appellant respectfully requests that this Court grant her petition for rehearing and reverse its

finding that Appellant was precluded from challenging the admissibility of testimony at trial.

II. The lower court abused its discretion in allowing Defendant's previously-designated experts to offer testimony regarding their examination of the Appellant.

"The exercise of a trial court's discretion implies conscientious judgment, not arbitrary action, and takes account of the law and particular circumstances of the case, being directed by the reason and conscience of the judge to a just result." *Horn v. Davis Elec. Constructors.* 312 S.C. 363, 366, 440 S.E.2d 398, 400 (Ct. App. 1994) (citing *Nienow v. Nienow*. 268 S.C. 161, 232 S.E.2d 504 (1977); and *State v. Hill*. 266 S.C. 49, 221 S.E.2d 398 (1976)). In the present case, the trial court failed to take into account the law or the particular circumstances of the case. Specifically, the trial court ignored the primary purpose of independent medical evaluations under Rule 35, SCRCP, and *Fairchild*. "The purpose of the rule for an IME is to materially aid the jury, not just the defendant, in evaluating the actual damages sustained and arriving at a just verdict. [...] Thus, the better rule is that the physician should not be affiliated with either party in order to serve the purposes of Rule 35." Id. 727 S.E.2d at 417, 398 S.C. at 109-110 (Emphasis added). See also this Court's own opinion in *Fairchild*, 683 S.E.2d 818, 826, 385 S.C. 344 (Ct. App. 2009), affirming the lower court's finding that "[I]ndependent means independent and that means no witness has previously been identified by the Plaintiff or the Defendant gives the independent medical exam."

By allowing Defendants' previously-designated experts to *testify* to a jury about their physical and mental examinations of Mrs. Whitfield, the trial court afforded them the same privileges reserved for independent, disinterested, and unbiased physicians contemplated under both Rule 35, SCRCP and the South Carolina Supreme Court's holding *Fairchild*. This was an

abuse of discretion and resulted in the admission of patently biased and highly prejudicial testimony to the jury.

As noted in Appellant's Final Briefs, the expert witnesses were not independent, disinterested, and unbiased physicians that could offer the type of testimony that could "materially aid the jury" under Rule 35, SCRCP and *Fairchild*. To the contrary, Defendants' plastic surgery expert and psychiatry expert had already been retained and identified by Defendants as expert witnesses prior to their examination of Mrs. Whitfield; they had already reviewed Mrs. Whitfield's medical records, been deposed by her counsel, written extensive notes on their findings, reached conclusions, and rendered opinions as to Mrs. Whitfield's physical and mental state. (Trial Tr., R. p. 1383, line 10 -13; p. 1394, lines 1-7; p. 1507, lines 6-9; p. 1508, line 13 – p. 1509 line 9; p. 1544, lines 3-5; p. 1553, lines 8-17). In addition, Defendants had already paid their experts thousands of dollars for their time and evaluations prior to the examinations. (Trial Tr., R. p. 1507, lines 6-18). Most strikingly, Defendants' psychiatric expert, Dr. James Ballenger, was the very expert disallowed by the trial court, the Court of Appeals, and the Supreme Court in *Fairchild*.

The lower court also abused its discretion by summarily denying Appellant's Motion in Limine without making *any* findings or offering *any* rationale for its ruling, simply stating, "All right. I am going to deny the motion. And you're—you [Defendants] can bring it up in your opening." (Trial Tr., R. p. 627, lines 3-4). Respectfully, the lower court's ruling was manifestly arbitrary, unreasonable, and unfair, and amounted to an abuse of discretion meriting reversal by this Court. "A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair." *Fields v Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 609 S.E.2d 506 (2005); *Means v. Gates*, 348 S.C. 161,

558 S.E. 2d 921 (Ct. App. 2001). Based on the foregoing, Appellant respectfully requests that this Court grant her petition for rehearing, reverse the lower court's ruling, vacate its unpublished opinion, and remand this case for a new trial on the merits.

III. This Court erred in finding that Appellant was required to proffer the Office Manager's testimony to preserve the evidentiary issue for appeal where the substance of the testimony and the grounds for allowing the testimony (i.e. impeachment of the Office Manager's credibility) were already clearly established in the record. A proffer is not required under these circumstances:

> [W]here the specific evidentiary basis supporting admission of evidence is apparent from the context of the case, the failure to make an offer of proof will not be fatal to the appeal of that issue. Rule 103(a)(2), SCRE. The official note of the rule specifically states that "[t]he rule does change South Carolina law by dispensing with the requirement of a proffer and a statement of the grounds for admissibility where the substance of the evidence and the grounds are apparent from the context." Rule 103(a)(2), SCRE note.
>
> Jean Hoefer Toal, *Appellate Practice in South Carolina* (3rd ed. 2016) at 201.

In the present case, a proffer of the office manager's testimony was not necessary to preserve the issue on appeal because 1) The record before the lower court clearly established that the Office Manager would have testified about her *admitted* ongoing sexual relationship with Dr. Schimpf and the various forms of compensation that she received from him, and 2) it was clear from the record that the exclusion of the Office Manager's testimony regarding these subjects prejudiced the Appellant.

Specifically, a proffer was not necessary because there was no question at trial as to the character or content of the Office Manager's excluded testimony or the grounds for allowing the testimony. (Tr. Transcript, R. p. 590, line 13 – p. 591, line 19; p. 602, line 9 to p. 603, line 13; p.

606, lines 4 -13). During her deposition, the Office Manager admitted to an ongoing sexual relationship with Dr. Schimpf and testified as to the various forms of compensation she received from him. (Depo. Tr., 2/11/19, R. p. 377, line 10 to p. 385, line 22). The Office Manager testified as to her salary and the numerous complimentary cosmetic procedures she received from Dr. Schimpf over the years. Id. Appellant's lawyers even filed the depositions for purposes of entering and preserving the testimony in the record (Trial Tr., R. p. 590, line 13 – p. 591, line 19). In addition, the very purpose of Respondents' Motion in Limine, filed August 26, 2019, was to exclude the Office Manager's testimony due to the admissions made by her during her deposition, admissions which were, again, *filed in the lower court and in the record*. (Motion, R. p. 179).

This Court's opinion also overlooks that the South Carolina Supreme Court has carved out a clear exception to the requirement for a proffer where 1) the record reflects what the witness was going to testify to, and 2) it is clear from the record that the Court's failure to admit the witness's testimony prejudiced the Appellant:

> [W]hen it is clear from the record that prejudice exists, the issue will be preserved on appeal despite the absence of a proffer. See State v. Myers, 301 S.C. 251, 391 S.E.2d 551 (1990). The reason for the rule requiring a proffer of excluded evidence is to enable the reviewing court to discern prejudice. Id. That rule has been relaxed where the record clearly demonstrates prejudice. Id.
>
> The record reflects Thomason was going to testify to the statements Walker made in his letter to her. The record clearly indicates King would be prejudiced by the exclusion of Thomason's testimony. Therefore, the issue of whether Thomason's testimony was properly excluded is preserved for review despite the lack of a proffer.
>
> *State v. King*, 623 S.E.2d 865, 868, 367 S.C. 131 (2006)

In the present case, it is clear that the Office Manager would have testified as to her ongoing sexual relationship with Dr. Schimpf and the types of compensation she received from him. (Depo. Tr., 2/11/19, R. p. 377, line 10 to p. 385, line 22). Again, the Office Manager's deposition transcripts were filed with the Court and in the record. (Tr. Transcript, R. p. 590, line 13 – p. 591, line 19; p. 602, line 9 to p. 603, line 13; p. 606, lines 4 -13). Additionally, this testimony was the very subject matter of Respondent's Motion in Limine. (Motion, R. p. 179).

The Appellant is not required to make a proffer of the Office Manager's testimony, where the subject matter of the sexual relationship and forms of compensation had just been discussed before the Court. (Tr. Transcript, R. p. 590, line 13 – p. 591, line 19; p. 602, line 9 to p. 603, line 13; p. 8 606, lines 4 -13). Not only was the witnesses' deposition testimony filed as of record, but the trial judge also specifically considered the testimony contained within the depositions during Appellant's Motion in Limine and found the testimony inadmissible. (Depo. Tr., 2/11/19, R. p. 377, line 10 to p. 385, line 22). All litigants were clearly aware that it was this very deposition testimony concerning these matters that was the subject of the trial judge's ruling granting Defendants' Motion in Limine. See also Defendants' Motion to Remove the Deposition Transcripts from the Public Index and Motion in Limine corroborating the same. (R. pp. 175-188).

Mrs. Whitfield was prejudiced by the exclusion of this testimony because she had no other means by which to establish the Office Manger's interest, bias, or partiality toward Dr. Schimpf and impeach her credibility. As noted in Appellant's Final Brief, the Office Manager gave starkly different testimony at trial than Ms. Whitfield as to what transpired when Mrs. Whitfield requested a copy of her missing medical records. (Appellant's Final Brief, Argument II, pp. 11-22). The Office Manager's observations regarding Dr. Schimpf's post-operative

treatment of and behavior towards Mrs. Whitfield were also directly at odds with Mrs. Whitfield's testimony. (Trial Tr., R. p. 934, line 9 – p. 941, line 5). It was error for this Court to find that a proffer was necessary where neither the rules nor caselaw require one under the present circumstances and where exclusion of the testimony prejudiced Appellant. Accordingly, Appellant respectfully request that this Court grant her petition for rehearing, vacate its unpublished order, and remand this case for a jury trial on the merits.

IV. **The lower court abused its discretion in failing to acknowledge and/or apply the general rule for establishing bias.** As set forth in Appellant's Final Brief and at trial, the standard for establishing bias is not whether the Court deems the sought-after evidence "relevant" to the proceedings, but rather whether the testimony can demonstrate the witness is biased in rendering her testimony. "[O]ur courts have followed the "general rule" that "'anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony,'" so that "'on cross-examination, <u>any</u> fact may be elicited which tends to show interest, bias, or partiality' of the witness." [Emphasis added] *Smalls v. State*, 810 S.E.2d 836, 840, 422 S.C. 174, 182-183 (2018). "Rule 608(c) [of the South Carolina Rules of Evidence] 'preserves [this longstanding] South Carolina precedent.'" *Id.*, citing *State v. Sims* , 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002). Specifically, Rule 608(c), SCRE, states: "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced."

Considerable latitude is generally allowed in the cross-examination of an adverse witness for possible bias." *North Greenville College v. Sherman Const. Co*., Inc., 243 S.E.2d 441, 442, 270 S.C. 553, 556 (1978), citing *Martin v. Dunlap*, 266 S.C. 230, 222 S.E.2d 8 (1976). As noted

by McCormick: “The law recognizes the slanting effect upon human testimony of the emotions or feelings of the witness toward the parties or the self- interest of the witness in the outcome of the case. Partiality, or any acts, relationships or motives reasonably likely to produce it, may be proved to impeach credibility.” *Id*., citing McCormick on Evidence, § 40, p. 78 (1972).

Here, the Office Manager’s long-standing sexual relationship with Dr. Schimpf and her “emotions or feelings toward him” are likely to have “a slanting effect” upon her testimony. Her “self-interest in the outcome of the case” can be directly tied to maintaining her personal and professional relationship with Dr. Schimpf. Minimally, a fact exists which tends to show “interest, bias, or partiality of the witness.”

The trial court manifestly failed to take into account the law and particular circumstances of the case, and, instead, based its ruling on the conclusory findings: “I don't’ think she’s biased” and “I don’t think anything has been elicited as to fact that she’s been untruthful in any way.” (Trial Tr., R. p. 939, lines 9-12). In doing so, the trial court abused its discretion and prejudiced the Plaintiff who could not otherwise demonstrate that Office Manager’s testimony was clearly biased and not credible. “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Clark v. Cantrell.* 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (citing *Fontaine v. Peitz.* 291 S.C. 536, 354S.E.2d565 (1987)). Accordingly, Appellant respectfully requets that the trial court’s ruling be reversed, that this Court’s unpublished opinion be vacated, and that the case be remanded for a new trial on the merits.

V. **The lower court abused its discretion in failing to grant Appellant’s directed verdict motion on the negligence per se claim brought under Regulation 61-1.703 of the South Carolina Code.** Specifically, the lower court erred in denying Appellant’s motion for a

directed verdict as to negligence per se where 1) Defendants admitted that they did not properly maintain medical records for Mrs. Whitfield as required by statute, 2) the evidence established that Defendants' failure to maintain records proximately caused harm to Mrs. Whitfield, and 3) there were no other inferences to be drawn from Defendants' failure to maintain the medical records as required by statute.

At trial, the Office Manager testified that she was in charge of maintaining medical records for the Defendants. (Trial Tr., R. p. 900, lines 22-25). As such, Mrs. Whitfield's counsel examined her regarding S.C. Code of Regulations 61-91, Standards for Licensing and Ambulatory Surgical Facilities, Section 700, titled Patient Records. (Trial Tr., R. p. 900, line 17 to p. 903, line 17). With regard to Mrs. Whitfield's medical records, the Office Manager admitted that Defendants did not comply with Section A of the Code, which states:

> The facility shall initiate and maintain an organized record for each patient. The record shall contain: sufficient documented information to identify the patient; the person responsible for each patient; the description of the diagnosis and the care, treatment, procedures, surgery, and/or services provided, to include the course of action taken and results; and the response and reaction to the care, treatment, procedures, surgery, and/or services provided. All entries shall be indelibly written, authenticated by the author, and dated.

Specifically, the Office Manager testified:

> Q. Would you agree with me that Sweetgrass did not follow that section with regards to Mrs. Whitfield?
>
> A. As I said before, we do our best.
>
> Q. And I understand that you've done -- you try. But what I'm specifically trying to get an answer to is **did Sweetgrass comply with Section A as it pertains to Mrs. Whitfield's medical records**?
>
> A. **No.**
>
> (Trial Tr., R. p. 901, line 21 – p. 902, line 3)

The Office Manager also testified that Defendant SPS did not comply with Section B of the Code, which states in relevant part:

> Specific entries/documentation shall include at a minimum:
>
> 1. Consultations by physicians or other legally authorized healthcare providers;
>
> [...]
>
> 3. Orders and recommendations for all care, treatment, procedures, surgery, and/or services from physicians or other legally authorized healthcare providers, completed prior to, or at the time of patient arrival at the facility, and subsequently, as warranted;
>
> 4. Care, treatment, procedures, surgery, and/or services provided;
>
> 5. Record of administration of each dose of medication; […]
>
> 11. Signed informed consent;

Specifically, the Office Manager testified:

> Q. Okay. So what I'm asking you is did Sweetgrass comply with
>
> Paragraph B because of not keeping those records?
>
> A. The records were incomplete.
>
> Q. Okay. **Did they comply with Paragraph B?**
>
> **A. No.**
>
> Q. Would you agree with me that Sweetgrass failed to maintain an organized record for Mrs. Whitfield?
>
> A. Yes. But we -- we treat patients, not medical records.
>
> Q. Are medical records important?
>
> A. Yeah.
>
> (Trial Tr., R. p. 903, lines 8- 17)

In addition to the Office Manager's admissions regarding medical records, Dr. Schimpf testified that there was no signed informed consent form for the procedure he performed on Ms. Whitfield neck. (Trial Tr., R. p. 1335, line 17 to p. 1336, line 8). Clearly, Defendants admitted that they did not properly maintain medical records for Mrs. Whitfield as required by statute.

VI. This Court's opinion erred in finding that Appellant did not sufficiently establish causation of injury to support her motion for directed verdict on the negligence per se claim. Specifically, there was sufficient evidence to establish causation of harm to Appellant where her 1) her Medical Expert, Dr. Michael Rosenberg, testified that Defendants' failure to maintain records caused the Appellant harm and damage. (Trial Tr., R., p. 1035, line 20 to p. 1036, line 14; p. 1037, lines 2-19), and 2) Plaintiff's psychiatrist, Dr. Sara Marcino, offered testimony that Mrs. Whitfield experienced psychological trauma from having a nonconsensual procedure performed on her by Dr. Schimpf. (Trial Tr., R. p. 1122, line 21 – p 1124, line 3). There are absolutely no other inferences to be drawn from Defendants' failure to maintain the medical records as required by statute.

Conclusion

For the foregoing reasons, Appellant respectfully request that this Honorable Court grant her petition for rehearing, vacate its unpublished opinion, and remand this case for a new trial on the merits.

[Signature on following page]

Respectfully submitted,

s/Jesse Sanchez
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December 8, 2022
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jeane Whitfield, Appellant,

v.

Dennis K. Schimpf, M.D. and Sweetgrass Plastic Surgery, LLC, Respondents.

Appellate Case No. 2019-001716

Appeal From Charleston County
Bentley Price, Circuit Court Judge

Unpublished Opinion No. 2022-UP-417
Heard September 15, 2022 – Filed November 23, 2022

AFFIRMED

Daniel Scott Slotchiver and Andrew Joseph McCumber, both of Slotchiver & Slotchiver, LLP, of Mount Pleasant; Jesse Sanchez, of The Law Office of Jesse Sanchez, of Charleston; and Brent Souther Halversen, of Halversen & Halversen, LLC, of Mount Pleasant, all for Appellant.

Todd W. Smyth and Kevin Richard Horton, both of Smyth Whitley, LLC of Charleston; Stephen Tyler Graves, of Graves & Davis, LLC, of Charleston, all for Respondents.

PER CURIAM: This is a medical malpractice action in which Jeane Whitfield contends plastic surgery performed by Dr. Dennis K. Schimpf and Sweetgrass Plastic Surgery, LLC, caused her physical and psychological damages. On appeal, Whitfield raises three allegations of error: (1) the trial court erred in excluding testimony from defense experts Dr. James Ballenger and Dr. Jorge Perez relating to their examination of Whitfield pursuant to Rule 35, SCRCP; (2) the trial court erred in excluding evidence regarding a personal relationship between a witness and Dr. Schimpf; and (3) the trial court erred in denying Whitfield's directed verdict motion regarding the failure of Sweetgrass Plastic Surgery to maintain certain medical records relating to her treatment pursuant to Regulation 61-91.703(D) of the South Carolina Code (2012 & Supp. 2022). We affirm pursuant to Rule 220(b), SCACR and the following authorities:

1. As to the trial court's excluding certain testimony from Dr. Ballenger and Dr. Perez: *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) (stating "to challenge the specific rulings of [a] discovery order[], the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding"); *Ex parte Whetstone,* 289 S.C. 580, 580, 347 S.E.2d 881, 881-82 (1986) ("An order directing a party to participate in discovery is interlocutory and not directly appealable . . . . Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply."); *Green By & Through Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994) (hearing the appeal of a civil contempt order against grandmother who refused to produce her grandson for examination by clinical psychologist under Rule 35, SCRCP); *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One [c]ircuit [c]ourt [j]udge does not have the authority to set aside the order of another.").

2. As to the trial court's exclusion of testimony regarding a personal relationship between a witness and Dr. Schimpf: Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach [a] witness either by examination of the witness or by evidence otherwise adduced."); *State v. Roper*, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979); ("It is well settled that a reviewing court may not consider error alleged in exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been."); *Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 244, 391 S.E.2d 546, 547 (1990) ("An alleged erroneous exclusion of evidence is not a basis for establishing prejudice on

appeal in absence of an adequate proffer of evidence in the court below."); *Ellis v. Oliver* 323 S.C. 121, 132, 473 S.E.2d 793, 799 (1996) ("[A]ppellant failed to proffer [the] records he sought to introduce. Consequently, this issue is not preserved for review."); *Martin*, 301 S.C. at 244, 391 S.E.2d at 547 ("Because appellant's trial counsel failed to make an offer of proof in order to preserve the question for appeal, we do not need to address whether the trial judge erred in excluding such testimony."); Rule 103(a)(2), SCRE ("Error may not be predicated upon a ruling which . . . excludes evidence unless . . . the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.").

3. As to the trial court's denial of Whitfield's directed verdict motion on her negligence cause of action brought under Regulation 61-91.703 of the South Carolina Code: *McKaughan v. Upstate Lung & Critical Care Specialists, P.C.*, 421 S.C. 185, 189, 805 S.E.2d 212, 214 (Ct. App. 2017) ("When reviewing the trial court's decision on a motion for directed verdict, this court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." (quoting *Burnett v. Family Kingdom, Inc*. 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010))); *Turner v. Med. Univ. of S.C.,* 430 S.C. 569, 582, 846 S.E.2d 1, 7 (Ct. App. 2020) ("This court will reverse the circuit court's ruling on a directed verdict motion only when there is no evidence to support the ruling or when the ruling is controlled by an error of law."); *Whitlaw v. Kroger Co.*, 306 S.C. 51, 53-54, 410 S.E.2d 251, 252-53 (1991) ("[B]reach of [a] duty can be found with a showing of [the] violation of [a] statute. The finding of a statutory violation, however, does not end the inquiry. The causation of the injury must also be evaluated.").

AFFIRMED.

KONDUROS, HEWITT, and VINSON, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Case No. 2017-CP-10-02758
Appellate Case No. 2019-001716

Jeane Whitfield, Appellant,

v.

Dennis K. Schimpf, M.D. and Sweetgrass Plastic Surgery, LLC,

and

Patrick O'Neil, M.D. and O'Neil Plastic Surgery, Respondents.

PROOF OF SERVICE

I, the undersigned, certify that I have served Appellant Jeane Whitfield's *Petition for Rehearing* on Respondents Dennis K. Schimpf, M.D. and Sweetgrass Plastic Surgery, LLC, by emailing a copy on December 8, 2022, addressed to their attorneys of record at the following AIS email addresses: Todd Smyth, Esq. (tsmyth@smythwitley.com), Joshua S. Whitley, Esq., (jwhitley@smythwhitley.com), Kevin Horton, Esq., (khorton@shumaker.com), and Stephen T. Graves, Esq. (tgraves@gravesdavis.com).

Pursuant to Rule 262(C)(3), SCACR, and the Order of The Supreme Court of South Carolina, RE: Methods of Electronic Filing Under Rule 262 of the South Carolina Appellate Court Rules (as Amended May 6, 2022), a copy of the email to counsel is attached.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

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December 8, 2022
Charleston, South Carolina

From: **Jesse Sanchez** jesse@jessesanchezlaw.com
Subject: Whitfield v. Schimpf 2019-001716 - Petition for Rehearing
Date: December 8, 2022 at 2:54 PM
To: Todd Smyth tsmyth@smythwhitley.com, jwhitley@smythwhitley.com, khorton@shumaker.com, tgraves@gravesdavis.com
Cc: Dan dan@slotchiverlaw.com, Brent Halversen Brent@halversenlaw.com, Andrew J. McCumber andrew@slotchiverlaw.com

Counsel,

For service, attached please find Appellant Jeane Whitfield's Petition for Rehearing and corresponding cover letter, all of which are being filed momentarily with the South Carolina Court of Appeals via OneDrive Electronic Submission.

Regards,

Jesse

--
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December 8, 2022

VIA ONE DRIVE ELECTRONIC SUBMISSION

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Jeane Whitfield, Appellant v. Dennis K. Schimpf, M.D. and Sweetgrass Plastic Surgery, LLC, Respondents, Appellate Case No. 2019-001716

Dear Ms. Kitchings:

Enclosed herewith, please find the following for filing with the Court:

1. Appellant Jeane Whitfield's *Petition for Rehearing*.

2. A copy of *Opinion No. 2022-UP-417*, filed on November 23, 2022 from which this Petition for Rehearing is made.

3. The corresponding *Proof of Service* evidencing service on all counsel of record via electronic mail.

A law firm check for the fifty dollar ($50.00) filing fee has been placed in today's outgoing mail via US Priority Mail.

Thank you for your assistance with this matter. Should you have any questions or wish to discuss the filing, please do not hesitate to contact me directly.

Sincerely,

s/Jesse Sanchez

Jesse Sanchez (SC Bar 101906)

Enclosures (as stated)

Cc (Via Email Only): Daniel S. Slotchiver, Esquire
Andrew J. McCumber, Esquire
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